

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

MARY LOUISE SMITH; and
TIFFANY E. SMITH

PLAINTIFFS

v.

No. 3:19-cv-82-DPM

ASA HUTCHINSON, in his Official
Capacity as Governor of the State of
Arkansas, *et al.*

DEFENDANTS

ORDER

This case needs untangling. First, the Smiths' embedded motion for partial summary judgment, *No. 38*, is denied without prejudice as premature. The State Defendants' motion for more time to respond to that motion, *No. 42*, is denied as moot.

Second, the Court construes the Smiths' amended response, *No. 38*, as a motion to amend their previous responses, *No. 33 & No. 34*. That request is granted; and the State Defendants' embedded motion to strike this paper, *No. 42*, is denied. If the State Defendants want to supplement their consolidated reply, *No. 36*, then they may do so by 10 January 2020. No sur-reply from the Smiths will be allowed. The Court is tardy in addressing the pending motions, and needs to get to their merits soon.

Third, the Smiths' motion to file records under seal, *No. 41*, is granted with a caveat: This Court can consider records from the state

juvenile court proceedings in deciding the motions to dismiss. *Miller v. Redwood Toxicology Laboratory, Inc.*, 688 F.3d 928, 931 & n.3 (8th Cir. 2012). So if the Smiths want to submit other papers from those cases as exhibits to the amended response, then they may do so. The Court directs the Clerk to file any such exhibits under seal. But the Court will exclude any exhibits that aren't matters of public record or materials embraced by the pleadings. *Ibid.* Sealed exhibits—with courtesy copies to Little Rock chambers and opposing counsel—due by 23 December 2019.

Fourth, the state court records have raised one more issue: Judges Thyer and Richardson are on my recusal list. And though I don't know Ben Bristow well, his father and sister (Judge Richardson) are on my recusal list. All these folks, though, are at the margins of this federal lawsuit. I don't believe my impartiality could reasonably be questioned.

* * *

Motion to amend response and for partial summary judgment, No 38, partly granted and partly denied without prejudice. Motion for protective order and to strike, No 42, denied. Motion to file records under seal, No 41, granted with a caveat. Sealed exhibits with courtesy copies due by 23 December 2019. Any supplemental reply on the motions to dismiss is due by 10 January 2020.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

18 December 2019